

From this decree the defendant appealed, and the Court of Appeals, (*Archer, C. J., Dorsey, Chambers, Magruder and Martin, J.,*) at its December term, 1845, reversed the decree of the Chancellor, and remanded the cause, *Magruder, J.*, delivering the following opinion of that court.

"In this case the bill of complaint does not bring before the Court the necessary parties, and for this reason the decree must have been reversed and the bill dismissed but for the act of 1818, *ch.* 193.

"Before a final decree, the necessary parties must be made and have an opportunity of showing why the complainant should not obtain the relief which he seeks. We shall, therefore, remand the case to the Chancery Court.

"When the bill is amended, the defendant will have a right to answer it."

The cause being reinstated in Chancery, the bill was amended by making Charles F. Mayer, the party for whose use the judgment against Iglehart was entered, a party defendant, who appeared and filed his answer on the 27th of March, 1847.

This answer avers, that he knows nothing of the levy on the tobacco spoken of in the bill, but does know that Robinson asserted his right to one-third of said tobacco, or of the value or proceeds thereof, and contended that the infants of whom he was guardian, were not legally nor equitably entitled to said one-third, especially as he, in his guardian's accounts, had accounted for the full rent of the farm whence the said crop issued. That defendant believes Robinson was right in all these, his pretensions, and that the levy spoken of was an unjust proceeding, and virtually, if not technically, a trespass on his property, either directly or through the legal or ostensible rights of the tenant, Lee.

He admits that Robinson sued Iglehart in trespass, and that the case was referred to referees, who awarded that the former should be non-suited, but he denies that this award was made on the merits, but was founded on the position that Robinson had no such property specifically in the tobacco as entitled him to bring trespass for it, and that the result of this decision